1945. **File No.** O. Foreign Juris. /45

Legal Deptt

A **BRANCH**

Subject:— Opinions under the Indian (Foreign Jurisdiction) Order-in-Council 1937

O Foreign Juris/45-

File No.

Gen. 194 e.

496-A

C O N T E N T S.

Legal Department File No. O. Foreign Juris /45

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Office of the R.L.A.

By his Order No. A.D.M. 1013 dated ---- -September 1943, the District Magistrate, Satara, imposed a ban on the export of potatoes from any place within the Satara District to any place outside the Satara District except under a permit. On 4th November 1945 a consignment of 11 bags of potatoes was booked by the Stationmaster Rahimatpur in the Satara District to Budhgaon railway station in Miraj(Junior)State without an export permit. It appears from the letter of the Chief Commercial Manager, Madras, that Budhgaon station is shown as situated in the Satara District in the alphabetical list of railway stations published by the Indian Railway Conference Association. By virtue of the political Department Notification No. & 385-I-B dated 15th June 1939, as amended by Notification No. 385-I-B dated 13th October 1943 and the Home Department Notification No. 1644/4 dated 27th October 1944, the Government of Bombay exercised full civil and criminal jurisdiction over Budhgaon which for the purpose of this jurisdiction is included within the local limits of the Satara District. The District Magistrate of Satara is of opinion that Budhgaon cannot be considered to be part of the Satara District merely because the notifications referred toextend the laws in force in Satara District to railway lands within the Miraj(Junior) State. The question referred to the R.L.A. for advice is whether the view taken by the D.M. is correct and whether the action of the Rahimatpur Stationmaster in sending the consignment to Budhgaon without an export permit was in contravention of the D.M.'s order banning the export of potatoes from the Satara District.

2 The facts in Emperor v. Raghunathrao Vinaekrao (5 Bom. L.R. 873) were as follows:

"The accused was charged with having imported bhang into the Presidency of Bombay, inasmuch as a parcel containing bhang and bearing his name andaddress was received at Kalol, a railway station in Native State, the Criminal jurisdiction over which was ceded to the Government of India

without any cession of territory. In holding the accused not guilty Thri Lordship held:

The question before us is not one merely of jurisdiction, but one entering into the definition of the offence. There is no offence unless the importation was into the presidency of Bombay, that is, into territories which form part of British India. If the land has not actually been ceded it cannot form part of British India, and one element, the main element of the offence, is lacking.

The provisions of the Foreign Jurisdiction Act relate only to the exercise of power and jurisdiction and if, as contended by the learned Government Pleader, the Notification of the 17th April 1885, purports by its reference to Bombay Act V of 1876 to go beyond the objects recognised by that Act(XXI of 1879), and to extend the limits of British India for other purposes, it is to that extent ultra vires. It is obvious that to hold otherwise would open the door to incessant harassment of the residents of the surrounding districts. Outside the limits of the Railway a person would be unaffected by the provision of the Act, but if he made a journey by train to the next station in possession of a prohibited quantity of bhang he would become liable to punishment under clauses (a) and (b) of section 43(1) of the Act".

3 The present case is just the converse of the case referred to above, but the principle enunciated therein would be equally applicable. The Political Department Notifications Nos. 385-I-B dated 15th June 1939 and 385-I-B dated 13th October 1943 issued under the Indian(Foreing Jurisdiction) Order-in-Council 1937, merely provide for the civil, criminal and revenue jurisdiction over the railway lands in State limits, but there is no express cession of territory or sovereignty. The mere exercise of civil and criminal jurisdiction over Budhgaon cannot amount to cession of territory so as to constitute Budhgaon part of the Satara District. The view taken by the D.M., Satara, appears therefore to be correct, and, on the facts, there has been a technical contravention of his export ban Order. But since the legal position was not properly understood at the time of the export of potatoes from Rahimapur to Budhgaon, a prosecution for contravention of the D.M.'s Order would not be advisable. It might perhaps be more expedient in the peculiar circumstances of the case to amend the Order by specifically banning the export of potatoes to railway stations like Budhgaon.

Id./..... 4/10/45

Remembrancer of Legal Affairs.

W.R. to F.D.(Supply),No. 7346, dated 5th October 1945.

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4 Copies.